
HOUSE BILL No. 1224

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-5; IC 3-7-48-1; IC 3-11; IC 3-11.7; IC 3-12-3-11; IC 3-14.

Synopsis: Voting systems and voter registration. Provides that certain voters whose registration is in question may cast a provisional ballot. Provides that furnishing all voters of the county with a sample ballot is an expense for which counties may be reimbursed from the voting systems education fund. Removes language that permits the use of noncompliant voting systems under certain circumstances. Provides for the use of voting systems that provide a practical and effective means for voters with disabilities to cast ballots in private. Requires that after December 31, 2004, a voting system must permit a voter to verify the voter's votes before the voter casts the ballot.

Effective: July 1, 2002.

Weinzapfel

January 10, 2002, read first time and referred to Committee on Elections and Apportionment.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1224

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-5-2-40.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]: **Sec. 40.7. "Provisional voter" refers to an individual who**
4 **is entitled to cast a provisional ballot under IC 3-11.7.**

5 SECTION 2. IC 3-5-2-41.7 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2002]: **Sec. 41.7. "Registration agency" refers to any of the**
8 **following:**

9 **(1) The bureau of motor vehicles.**

10 **(2) Any other agency at which individuals may register to vote**
11 **under IC 3-7.**

12 SECTION 3. IC 3-5-4-8, AS AMENDED BY P.L.38-1999,
13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2002]: Sec. 8. (a) Except as provided in subsection (e), but
15 notwithstanding any other statute, whenever the commission acts under
16 IC 3-6-4.1-14 to approve a uniform election or registration form for use
17 throughout Indiana or to approve a revision to an existing form, a

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1 person must use the most recent version of the form approved by the
 2 commission to comply with this title after the effective date of the
 3 commission's order approving the form.

4 (b) Except as provided in subsection (d) or (f), before an order
 5 approving a form takes effect under this section, the election division
 6 shall transmit a copy of each form or revised form approved by the
 7 order to the following:

8 (1) Each circuit court clerk, if the commission determines that the
 9 form is primarily used by a candidate, a county election board
 10 member, a county or town political party, or for absentee **or**
 11 **provisional** ballot purposes.

12 (2) Each county voter registration office, if the commission
 13 determines that the form is primarily used in voter registration.

14 (3) The state chairman of each major political party.

15 (4) The state chairman of any other political party who has filed
 16 a written request with the election division during the preceding
 17 twelve (12) months to be furnished with copies of forms.

18 (c) The election division, an election board, a circuit court clerk, a
 19 county voter registration office, or any other official responsible for
 20 receiving a filing under this title shall reject a filing that does not
 21 comply with this section.

22 (d) The commission shall specify the effective date of the form or
 23 revised form and may:

24 (1) delay the effective date of the approval of a form or revised
 25 form; and

26 (2) permit an earlier approved version of the form or an
 27 alternative form to be used before the effective date of the form;
 28 if the commission determines that an emergency requires the use of the
 29 form before copies can be transmitted to all persons entitled to receive
 30 copies of the form under subsection (b).

31 (e) This subsection applies to a form permitting an individual to
 32 apply for voter registration or to amend the individual's existing voter
 33 registration record. The commission may allow an earlier approved
 34 version of the form to be used if the:

35 (1) earlier version of the form complies with all other
 36 requirements imposed under NVRA or this title; and

37 (2) commission determines that the existing stock of the form
 38 should be exhausted to prevent waste and unnecessary expense.

39 (f) This subsection applies to a form that the commission determines
 40 is used primarily by the election division. The commission may provide
 41 that an order concerning a form described by this subsection is
 42 effective immediately upon adoption, without any requirement to

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1 distribute the form to other persons.

2 SECTION 4. IC 3-7-48-1 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2002]: Sec. 1. **(a)** Except as otherwise provided
4 by NVRA or in this chapter, a person whose name does not appear on
5 the registration record may not vote, unless the circuit court clerk or
6 board of registration provides a signed certificate of error in the office
7 where the permanent registration record is kept showing that the voter
8 is legally registered in the precinct where the voter resides.

9 **(b) A person whose name does not appear on the registration
10 record may cast a provisional ballot as provided in IC 3-11.7.**

11 SECTION 5. IC 3-11-3-2 IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) The election division shall
13 have printed and shall distribute to the circuit court clerk of each
14 county at each general election **the following:**

15 (1) If only paper ballots are used, the number of state paper
16 ballots (and presidential ballots in a presidential election year)
17 equal to one hundred percent (100%) of the number of voters in
18 the county. ~~and~~

19 (2) If voting machines, ballot card voting systems, or electronic
20 voting systems are used, only the number of presidential and state
21 paper ballots that, in the election division's judgment, are
22 necessary to meet an emergency.

23 **(3) After December 31, 2003, the number of provisional
24 ballots for state offices (and provisional ballots for President
25 of the United States in presidential election years).**

26 (b) The paper ballots shall be wrapped in packages, plainly marked,
27 and securely sealed.

28 **(c) The provisional ballots shall be separately wrapped in
29 packages from the other paper ballots, plainly marked, and
30 securely sealed.**

31 ~~(e)~~ **(d)** The clerk shall give a receipt for the paper ballots **and the
32 provisional ballots.**

33 SECTION 6. IC 3-11-3-6, AS AMENDED BY P.L.176-1999,
34 SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2002]: Sec. 6. **(a)** The election division shall deliver:

36 **(1) the state and presidential paper ballots; and**

37 **(2) after December 31, 2003, the provisional ballots for state
38 offices and presidential provisional ballots;**

39 by certified mail, or by another means of delivery that includes a return
40 receipt.

41 **(b) The election division shall mail the paper and provisional
42 ballots to:**

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- (1) each circuit court clerk; or
 (2) in a county subject to IC 3-6-5.2, the director of the board of elections and registration.

SECTION 7. IC 3-11-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. The county election board shall deliver the following to each inspector or the inspector's representative:

(1) The sealed package of paper ballots, **provisional ballots**, sample ballots, and any other supplies provided for the inspector's precinct by the election division.

(2) The local sample ballots, ~~and~~ the ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.

(3) The local ballots printed under the direction of the county election board as follows:

(A) The number of ballots equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.

(B) In those precincts where voting machines, ballot card systems, or electronic voting systems are to be used, the number of paper ballots that will be required for emergency purposes only.

(C) Provisional ballots in the number considered necessary by the county election board.

(4) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.

SECTION 8. IC 3-11-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 12. (a) The local ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the ballots. The ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready for the reception of votes.

(b) The local provisional ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, separate from the bag

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described in subsection (a), which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the provisional ballots. The provisional ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready to receive votes.

SECTION 9. IC 3-11-3-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 30. The circuit court clerk, if time permits before the ballots are delivered to the precincts, the poll clerks, or members of the absentee voter board, shall put one (1) of the pasters required by sections 29 and 29.5 of this chapter in the proper place on each ballot label bearing the name of the former candidate and on each paper ballot, **provisional ballot**, or ballot card to be voted in the precinct before they sign their initials on the ballot. The circuit court clerk shall put one (1) of the pasters on each ballot to be voted by an absentee voter before the clerk signs the ballot.

SECTION 10. IC 3-11-3-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. (a) Each county election board shall preserve the unused ballots that are left over after supplying the precincts, as prescribed by section 11 of this chapter. The ballots shall be preserved until expiration of the time for filing a contest or recount petition under IC 3-12.

(b) The board shall then destroy all of the ballots, except for one (1) **regular ballot and one (1) provisional ballot**.

SECTION 11. IC 3-11-3-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 32. (a) The county election board shall securely paste the one (1) **regular** ballot that was preserved under section 31 of this chapter in the election record immediately before the ~~place where the vote is to be recorded~~: **provisional ballot placed under subsection (b)**. The board shall also enter below the ballot the number of ballots:

(1) printed by the board;

(2) delivered to each messenger; and

(3) destroyed by the board.

(b) **The county election board shall securely paste the one (1) provisional ballot that was preserved under section 31 of this chapter in the election record immediately after the regular ballot placed in the record under subsection (a) and immediately before**

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the place where the vote is to be recorded. The board shall also enter below the provisional ballot the number of provisional ballots:

- (1) printed by the board;
- (2) delivered to each messenger; and
- (3) destroyed by the board.

SECTION 12. IC 3-11-6.5-8, AS ADDED BY P.L.239-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. (a) To receive payment for the development and implementation of a program for educating voters about voting procedures, a county must make an application to the budget agency in the form required by the budget agency.

(b) The budget agency, after review by the budget committee, shall approve a county's application for payment under this chapter if the county's application demonstrates to the budget agency all of the following:

- (1) That the county has developed a program for educating voters about the use of the county's voting system.
- (2) That the commission has approved the program and the county's implementation plan for the program.
- (3) That the program will enhance all of the following:
 - (A) Familiarity of voters with the county's voting system.
 - (B) Accessibility of the county's voting system to voters.
 - (C) Ease of use of the county's voting system by voters.
 - (D) Public confidence in the county's voting system.

(c) The budget agency shall approve a county's application, or that part of a county's application, that provides for furnishing all voters of the county with sample ballots before an election.

~~(c)~~ (d) If a county's application is approved under this section, the division shall, subject to subsection ~~(d)~~, (e), pay the county from the voting system education fund an amount equal to fifty percent (50%) of the amount of reasonable development and implementation costs of the county's program for educating voters about voting procedures, as determined by the budget agency.

~~(d)~~ (e) Payment of money from the voting system education fund under this section is subject to the availability of money in the fund and the requirements of this chapter.

SECTION 13. IC 3-11-7-17, AS AMENDED BY P.L.176-1999, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 17. (a) The election division (or a competent person designated by the commission to act on behalf of the election division) may periodically examine a ballot card voting system that the

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commission has previously approved to determine if the system is still in compliance with all statutory requirements.

(b) If the election division or competent person finds that a system examined under subsection (a) fails to meet all requirements and standards, and the commission concurs in these findings, the commission may, by unanimous vote of all of the members of the commission, rescind the commission's approval of the vendor.

(c) If the commission's approval is rescinded under subsection (b), the commission may, by unanimous vote of all of the members of the commission:

(1) recommend that use of the system be discontinued; and

(2) prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.

(d) This subsection applies to a ballot card voting system approved for its initial certification before:

(1) March 25, 1992; or

(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.

The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.

(f) This subsection applies to a ballot card voting system that:

(1) the commission has recommended discontinuing under subsection (e); or

(2) an independent testing authority has determined under subsection (e) to be out of compliance with this article:

Notwithstanding the recommendation under subsection (e) or the determination under subsection (e), a ballot card voting system may be used in a county until the circuit court clerk or the county election board of a county that uses the ballot card voting system files a request with the election division for an investigation of the ballot card voting system and the commission, by unanimous consent of its entire membership, makes a finding under subsection (g):

(g) The commission finding described under subsection (f) must satisfy both of the following:

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(1) ~~Be based on evidence of the ballot card voting system's use by a county election board.~~

(2) ~~Contain the following determinations:~~

(A) ~~The use of the voting system has resulted in a clear pattern of unreliable or erroneous casting or tabulation of ballots.~~

(B) ~~The continued use of the voting system would undermine the public confidence in the accuracy and integrity of Indiana's electoral system.~~

SECTION 14. IC 3-11-7.5-26, AS AMENDED BY P.L.176-1999, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. (a) The election division (or a competent person designated by the commission to act on behalf of the election division) may periodically examine an electronic voting system that the commission has previously approved to determine if that system is still in compliance with all statutory requirements.

(b) If the election division or competent person finds that a system examined under subsection (a) fails to meet all requirements and standards, and the commission concurs in these findings, the commission may, by unanimous vote of all of the members of the commission, rescind the commission's approval of the vendor.

(c) If the commission's approval is rescinded under subsection (b), the commission may by unanimous vote of all of the members of the commission:

(1) recommend that use of the system be discontinued; and

(2) prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.

(d) This subsection applies to an electronic voting system approved for its initial certification before:

(1) March 25, 1992; or

(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.

The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.

(f) ~~This subsection applies to an electronic voting system that:~~

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(1) the commission has recommended discontinuing under subsection (e); or

(2) an independent testing authority has determined under subsection (e) to be out of compliance with this article:

Notwithstanding the recommendation under subsection (e) or the determination under subsection (e), an electronic voting system may be used in a county until the circuit court clerk or the county election board of a county that uses the electronic voting system files a request with the election division for an investigation of the electronic voting system and the commission, by unanimous consent of its entire membership, makes a finding under subsection (g):

(g) The commission finding described under subsection (f) must satisfy both of the following:

(1) Be based on evidence of the electronic voting system's use by a county election board:

(2) Contain the following determinations:

(A) The use of the voting system has resulted in a clear pattern of unreliable or erroneous casting or tabulation of ballots:

(B) The continued use of the voting system would undermine the public confidence in the accuracy and integrity of Indiana's electoral system:

SECTION 15. IC 3-11-8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. **(a)** A voter challenged under section 20 of this chapter may vote if the voter makes an affidavit in writing that the voter is a legal voter of the precinct and **either of the following applies:**

(1) The voter's name appears on the registration list. ~~or~~

(2) The voter does one (1) of the following:

(A) Produces a certificate of error issued by a registration official of the county in accordance with IC 3-7-48 showing that the voter is registered in the precinct where the voter resides and offers to vote.

(B) Produces an affidavit executed under IC 3-10-10 or IC 3-10-11 if the voter executed an affidavit under those provisions.

(C) Makes an oral or a written affirmation under IC 3-10-12.

(b) A voter challenged under section 20 of this chapter:

(1) whose name does not appear on the registration list; and

(2) who is not permitted to cast a vote under IC 3-7-48-7;

is entitled to cast a provisional ballot under IC 3-11.7 if the voter makes an affidavit in writing that the voter is a legal voter of the precinct.

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SECTION 16. IC 3-11-8-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 23. The affidavit of a challenged voter required by section 22 of this chapter must be sworn and affirmed and must contain the following:

- (1) A statement that the voter is a citizen of the United States.
- (2) The voter's date of birth to the best of the voter's information and belief.
- (3) A statement that the voter has been a resident of the precinct for thirty (30) days immediately before this election or is qualified to vote in the precinct under IC 3-10-10, IC 3-10-11, or IC 3-10-12.
- (4) The voter's name and a statement that the voter is generally known by that name.
- (5) A statement that the voter has not voted and will not vote in any other precinct in this election.
- (6) The voter's occupation.
- (7) The voter's current residential address, including the street or number and if applicable, the voter's residential address thirty (30) days before the election, and the date the voter moved.
- (8) A statement that the voter understands that making a false statement on the affidavit is punishable under the penalties of perjury.
- (9) If the individual's name does not appear on the registration list and the individual is not entitled to vote under IC 3-7-48-7, a statement that the individual registered to vote and where the individual believes the individual registered to vote.**

SECTION 17. IC 3-11-15-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 13.5. (a) The commission shall determine whether a voting system provides a practical and effective means for voters with disabilities to cast ballots in private.**

(b) If the commission determines that any voting system meets the criteria described in subsection (a), a county may not purchase, lease, or lease-purchase any other voting system that does not meet the criteria described in subsection (a).

SECTION 18. IC 3-11-15-13.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 13.7. (a) A voting system may not be used in a precinct after December 31, 2004, unless the requirements of this section apply to the voting system actually in use in the precinct.**



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1 (b) A voting system must permit a voter to verify the voter's
 2 votes for each office and public question on the ballot before the
 3 voter casts the voter's ballot.

4 (c) A voting system must be able to inform the voter whether
 5 any of the following apply to the voter's ballot:

6 (1) The voter has failed to cast votes for as many candidates
 7 as the voter is entitled to vote for an office. The voting system
 8 must identify the office for the voter and must permit the
 9 voter to do either of the following in this case:

10 (A) Confirm the votes for the candidates for whom the
 11 voter initially recorded votes for the office.

12 (B) Change the voter's votes to vote for not more than the
 13 number of candidates the voter is entitled to vote for the
 14 office.

15 (2) The voter has cast votes for too many candidates for an
 16 office. The voting system must identify the office for the voter
 17 and inform the voter that if the voter does not change the
 18 voter's vote for this office, the voter's ballot that includes the
 19 office has been spoiled.

20 (3) The voter has failed to cast a vote on a public question.
 21 The voting system must identify the public question for the
 22 voter. The voting system must permit the voter to do either of
 23 the following in this case:

24 (A) Confirm the failure to cast a vote on the public
 25 question.

26 (B) Indicate a vote in favor of or opposed to the public
 27 question.

28 (4) The voter has cast votes both in favor of and opposed to a
 29 public question. The voting system must identify the public
 30 question for the voter and inform the voter that the voter's
 31 ballot that includes the public question has been spoiled.

32 (5) The voter's ballot is otherwise spoiled.

33 (6) The voter's ballot is unspoiled.

34 (d) The components of a voting system that verify a voter's vote
 35 as required by subsection (b) or that provide information to the
 36 voter under subsection (c) may be separate from the components
 37 of the voting system the voter uses to record the voter's votes.

38 (e) Except as provided in subsection (f), a voting system must be
 39 able to inform the voter how the voter may correct errors on the
 40 voter's ballot.

41 (f) A voting system is not required to provide the information
 42 required by subsection (e) if the information is provided in writing



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1 conspicuously on or near the components of the ballot card voting
2 system that verify a voter's vote.

3 SECTION 19. IC 3-11.7 IS ADDED TO THE INDIANA CODE AS
4 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
5 2002]:

6 **ARTICLE 11.7. PROVISIONAL VOTING**

7 **Chapter 1. Application and General Provisions**

8 **Sec. 1. This article applies to all elections held after December**
9 **31, 2003.**

10 **Sec. 2. (a) Except as provided in subsection (b), a provisional**
11 **ballot must have the same form as an absentee ballot for:**

12 (1) the election for which the ballot is cast; and

13 (2) the precinct in which the ballot is cast.

14 (b) A provisional ballot must indicate that the ballot is a
15 provisional ballot and not an absentee ballot.

16 **Sec. 3. Except as otherwise provided in this article, the**
17 **procedures described in this title for paper ballots apply to**
18 **provisional ballots.**

19 **Sec. 4. Each circuit court clerk shall:**

20 (1) not less than sixty (60) days before the date on which a
21 general, primary, or municipal election is held; or

22 (2) not more than three (3) days after the date on which a
23 special election is ordered;

24 estimate the number of provisional ballots that will be required in
25 the county for the election.

26 **Sec. 5. (a) Provisional ballots for:**

27 (1) President and Vice President of the United States;

28 (2) United States Senator;

29 (3) all state offices; and

30 (4) the ratification or rejection of a public question to be voted
31 for by the electorate of the entire state or for the retention of
32 a judge of the Indiana supreme court or the Indiana court of
33 appeals;

34 shall be prepared and printed under the direction of the election
35 division.

36 (b) The election division shall have the ballots printed upon
37 certification of the political party tickets and independent
38 candidates.

39 (c) Ballots prepared under this section must provide space for
40 the provisional voter to cast a write-in ballot.

41 (d) The provisional ballots that are prepared and printed under
42 this section shall be delivered to the circuit court clerk or the



1 clerk's authorized deputy not later than forty-five (45) days before
 2 a general election or twenty-nine (29) days before a special election.
 3 The provisional ballots shall be delivered in the same manner that
 4 other official ballots are delivered.

5 Sec. 6. (a) All provisional ballots other than those described in
 6 section 5 of this chapter shall be prepared and printed under the
 7 direction of each county election board.

8 (b) After completing the estimate required by section 4 of this
 9 chapter, the county election board shall immediately prepare the
 10 ballots and have the ballots printed.

11 (c) Ballots prepared by the county election board under this
 12 section must provide space for the voter to cast a write-in ballot.

13 (d) The provisional ballots that are prepared and printed under
 14 this section shall be delivered to the circuit court clerk not later
 15 than:

16 (1) forty-five (45) days before a general, primary, or
 17 municipal election;

18 (2) thirty-two (32) days before a special election.

19 Sec. 7. Each provisional ballot must be signed by the circuit
 20 court clerk or an individual authorized by the circuit court clerk
 21 and have the circuit court clerk's seal affixed.

22 Sec. 8. The county election board shall provide to each precinct
 23 election board envelopes marked "Provisional Ballot" in which a
 24 provisional voter places the voter's provisional ballots.

25 Sec. 9. Each package of provisional ballots delivered to a circuit
 26 court clerk shall be plainly marked, on an appropriate attached
 27 label, with the words: "This package contains _____ (giving
 28 number of ballots) provisional ballots.". The clerk shall securely
 29 keep all ballots in the clerk's office and shall distribute them to
 30 applicants as provided in this article.

31 Chapter 2. Casting a Provisional Ballot

32 Sec. 1. An individual:

33 (1) who is challenged;

34 (2) whose name does not appear on the registration list; and

35 (3) who is not permitted to vote under IC 3-7-48-7;

36 may cast a provisional ballot if the individual executes an affidavit
 37 described in IC 3-11-8-23.

38 Sec. 2. (a) A provisional voter shall do the following:

39 (1) Mark the ballot in the presence of no other person.

40 (2) Fold each ballot separately.

41 (3) Fold each ballot so as to conceal the marking.

42 (4) Enclose each ballot, with the seal and signature of the

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1 circuit court clerk on the outside, together with any unused
 2 ballot, in the envelope provided by the county election board
 3 under IC 3-11.7-1-8.

4 (5) Securely seal the envelope.

5 (b) A provisional voter may mark a ballot with a pen or a lead
 6 pencil.

7 Sec. 3. (a) The precinct election board shall affix to the envelope
 8 the challenger's affidavit and the affidavit executed by the
 9 provisional voter under section 1 of this chapter.

10 (b) The precinct election board shall securely keep the sealed
 11 envelope, along with the affidavits affixed to the envelope, in
 12 another envelope or container marked "Provisional Ballots".

13 Sec. 4. At the close of the polls, the precinct election board shall
 14 seal:

15 (1) all the provisional ballots; and

16 (2) any spoiled provisional ballots;

17 in the container described in section 3(b) of this chapter and mark
 18 on the container the number of provisional ballots contained. The
 19 inspector shall return the container with all the provisional ballots
 20 to the circuit court clerk after the close of the polls.

21 Chapter 3. Provisional Ballot Counters

22 Sec. 1. Each county election board shall appoint teams of
 23 provisional ballot counters consisting of two (2) voters of the
 24 county, one (1) from each of the two (2) political parties that have
 25 appointed members on the county election board.

26 Sec. 2. An otherwise qualified person is eligible to serve as a
 27 counter unless the person:

28 (1) is unable to read, write, and speak the English language;

29 (2) has any property bet or wagered on the result of the
 30 election;

31 (3) is a candidate to be voted for at the election, except as an
 32 unopposed candidate for precinct committeeman or state
 33 convention delegate; or

34 (4) is the spouse, parent, father-in-law, mother-in-law, child,
 35 son-in-law, daughter-in-law, grandparent, grandchild,
 36 brother, sister, brother-in-law, sister-in-law, uncle, aunt,
 37 nephew, or niece of a candidate or declared write-in candidate
 38 to be voted for at the election except as an unopposed
 39 candidate. This subdivision disqualifies a person whose
 40 relationship to the candidate is the result of birth, marriage,
 41 or adoption.

42 Sec. 3. Not later than noon ten (10) days before an election, each

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1 county election board shall notify the county chairmen of the two
 2 (2) political parties that have appointed members on the county
 3 election board of the number of teams of counters to be appointed
 4 under this section.

5 Sec. 4. The county chairmen shall make written
 6 recommendations for the appointments to the county election
 7 board not later than noon three (3) days before the election. The
 8 county election board shall make the appointments as
 9 recommended.

10 Sec. 5. If a county chairman fails to make any recommendations,
 11 the county election board may appoint any voters of the county.

12 Sec. 6. An individual serving as an absentee ballot counter under
 13 IC 3-11.5-4-12 may also serve as a provisional ballot counter under
 14 this chapter.

15 Chapter 4. Watchers for Political Parties, Candidates, and the
 16 Media

17 Sec. 1. The following apply for the purposes of IC 3-6-8,
 18 IC 3-6-9, and IC 3-6-10:

19 (1) The location for counting provisional ballots shall be
 20 treated the same as a precinct poll.

21 (2) A provisional ballot counter shall be treated the same as a
 22 precinct election official.

23 Sec. 2. (a) Political parties or independent candidates described
 24 in IC 3-6-8-1 may appoint watchers at the location for counting
 25 provisional ballots.

26 (b) A watcher appointed under this section:

27 (1) has the rights; and

28 (2) must follow the requirements;

29 set forth in IC 3-6-8.

30 Sec. 3. (a) A candidate entitled to appoint a watcher under
 31 IC 3-6-9 may appoint a watcher at the location for counting
 32 provisional ballots.

33 (b) A watcher appointed under this section:

34 (1) has the rights; and

35 (2) must follow the requirements;

36 set forth in IC 3-6-9.

37 Sec. 4. (a) Media entitled to appoint a watcher under IC 3-6-10
 38 may appoint a watcher at the location for counting provisional
 39 ballots.

40 (b) A watcher appointed under this section:

41 (1) has the rights; and

42 (2) must follow the requirements;

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1 set forth in IC 3-6-10.

2 **Chapter 5. Counting Provisional Ballots**

3 **Sec. 1. After the close of the polls, provisional ballots shall be**
 4 **counted as provided in this chapter.**

5 **Sec. 2. (a) Except as provided in section 5 of this chapter, if the**
 6 **county election board determines that each of the following applies,**
 7 **a provisional ballot is valid and shall be counted under this**
 8 **chapter:**

9 (1) The affidavit executed by the provisional voter under
 10 IC 3-11.7-2-1 is properly executed.

11 (2) The provisional voter is a qualified voter of the precinct.

12 (3) Based on all the information available to the county
 13 election board, including:

14 (A) information provided by the provisional voter;

15 (B) information contained in the county's voter
 16 registration records; and

17 (C) information contained in the statewide voter
 18 registration file;

19 the provisional voter registered to vote at a registration
 20 agency under this article on a date within the registration
 21 period.

22 (b) If the provisional voter has provided information regarding
 23 the registration agency where the provisional voter registered to
 24 vote, the board may not determine that the provisional voter did
 25 not register unless both of the following apply:

26 (1) The board makes an actual inquiry of the registration
 27 agency where the provisional voter states the provisional
 28 voter registered.

29 (2) The registration agency informs the board that the
 30 registration agency has no record of the provisional voter's
 31 registration.

32 **Sec. 3. (a) If the board determines that section 2(a)(1), 2(a)(2),**
 33 **or 2(a)(3) of this chapter does not apply, all the following apply:**

34 (1) The provisional ballot is invalid.

35 (2) The provisional ballot may not be counted.

36 (3) The provisional ballot envelope containing the ballots cast
 37 by the provisional voter may not be opened.

38 (b) If the county election board determines that a provisional
 39 ballot is invalid, a notation shall be made on the provisional ballot
 40 envelope: "Provisional ballot determined invalid."

41 **Sec. 4. If the board determines that a provisional ballot is valid**
 42 **under section 2 of this chapter, the provisional ballot envelope shall**

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1 be opened. The outside of each provisional ballot shall also be
2 marked to identify the precinct and the date of the election of the
3 ballots.

4 Sec. 5. (a) If any ballot cast by a provisional voter does not
5 contain the initials of the poll clerks, the ballot shall be endorsed
6 with the word "Rejected" without being unfolded to disclose how
7 the ballot is marked.

8 (b) All rejected provisional ballots shall be enclosed and
9 securely sealed in an envelope on which is written "Rejected
10 provisional ballots."

11 Sec. 6. The valid provisional ballots printed by the election
12 division shall be counted before counting the valid provisional
13 ballots printed by the county election board.

14 Sec. 7. To minimize delay, all provisional ballots for a precinct
15 shall be counted without interruption until all provisional ballots
16 for the precinct are canvassed and the certificates required by this
17 chapter are prepared and delivered to the person entitled to
18 receive the certificates.

19 Sec. 8. The provisional ballots shall be counted by laying each
20 ballot upon a table in the order in which the ballots were opened.

21 Sec. 9. (a) During the counting of the ballots, one (1) counter
22 shall read the name of the candidates voted for from the ballots.

23 (b) A:

24 (1) member of the county election board who is not a member
25 of the same political party as the counter; or

26 (2) representative designated by the member;

27 shall view the ballots as the names are read.

28 Sec. 10. During the counting of the ballots:

29 (1) the counter counting the ballots;

30 (2) a member of the county election board; or

31 (3) a representative designated by the members;

32 may protest the counting of any ballot or any part of a ballot.

33 Sec. 11. If the counters cannot agree whether to count a ballot
34 following a protest under section 10 of this chapter, the question
35 shall be referred to the county election board for a decision.

36 Sec. 12. Following a decision by the counters or the county
37 election board, the counters shall officially sign each protested
38 ballot.

39 Sec. 13. If a ballot or any part of a ballot is protested and the
40 protest is resolved, the counter immediately shall write on the back
41 of the protested ballot the word "counted" or "not counted", as
42 appropriate.

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1 **Sec. 14. A counter may not count provisional ballots for a**
 2 **precinct under this chapter while counting provisional ballots for**
 3 **any other precinct.**

4 **Sec. 15. (a) This section applies if at least two (2) sets of counters**
 5 **in a county are counting provisional ballots under this chapter.**

6 **(b) A set of counters may count provisional ballots from a**
 7 **precinct while another set of counters is counting provisional**
 8 **ballots from another precinct in the county if each set of counters**
 9 **counts the ballots in compliance with section 9 of this chapter.**

10 **Sec. 16. (a) This section applies to the counting of write-in**
 11 **provisional ballots.**

12 **(b) If a voter writes an abbreviation, a misspelling, or other**
 13 **minor variation instead of the correct name of a candidate or**
 14 **political party, that vote shall be counted if the intent of the voter**
 15 **can be determined.**

16 **(c) If a voter casts a ballot under this section for President or**
 17 **Vice President and writes in the name of a candidate or political**
 18 **party that has not certified a list of electors under IC 3-10-4-5, the**
 19 **vote for President or Vice President is void. The remaining votes**
 20 **on the ballot may be counted.**

21 **(d) IC 3-12-1-7 applies to write-in provisional ballots.**

22 **Sec. 17. When all the votes have been counted, the counters shall**
 23 **prepare a certificate stating the number of votes that each**
 24 **candidate received for each office and the number of votes cast on**
 25 **each public question.**

26 **Sec. 18. The number of votes that each candidate and public**
 27 **question received shall be written in words and numbers. The**
 28 **counters shall prepare a memorandum of the total votes cast for**
 29 **each candidate and on each public question and ensure that each**
 30 **member of the county election board receives a copy of the**
 31 **memorandum.**

32 **Sec. 19. The counters shall deliver the certificates prepared**
 33 **under section 17 of this chapter and the tally papers to the county**
 34 **election board immediately upon the tabulation of the vote in each**
 35 **precinct.**

36 **Sec. 20. As soon as the ballots have been counted, the counters**
 37 **shall do the following in the presence of the county election board:**

38 **(1) Place in a strong paper envelope or bag the following:**

39 **(A) All provisional ballots, voted and spoiled.**

40 **(B) All provisional ballots:**

41 **(i) determined invalid under section 3 of this chapter; or**

42 **(ii) rejected under section 5 of this chapter.**

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(C) All protested and uncounted provisional ballots.

(D) All provisional ballot envelopes.

(E) All executed affidavits relating to the provisional ballots.

(F) The tally papers.

(2) Securely seal the envelope or bag.

(3) Have both counters initial the envelope or bag.

(4) Plainly mark on the outside of the envelope or bag, in ink, the precinct in which the provisional ballots were cast.

(5) Deliver the envelope or bag to the circuit court clerk.

(6) Notify the circuit court clerk of the number of ballots placed in the envelope or bag.

Sec. 21. Upon delivery of the envelope or bag to the circuit court clerk, each counter shall take and subscribe an oath before the clerk stating that the counter:

(1) securely kept the ballots and papers in the envelope or bag;

(2) did not permit any person to open the envelope or bag or to otherwise touch or tamper with the ballots; and

(3) has no knowledge of any other person opening the envelope or bag.

Sec. 22. The circuit court clerk shall file the oath taken under section 21 of this chapter with the clerk's other election documents.

Sec. 23. The circuit court clerk shall place the envelope or bag in a receptacle provided by the county executive with two (2) different locks.

Sec. 24. The circuit court clerk shall do the following:

(1) Lock the receptacle provided under section 23 of this chapter.

(2) Retain one (1) key to one (1) lock of the receptacle.

(3) Give one (1) key to the other lock of the receptacle to the member of the county election board who is not a member of the same political party as the clerk.

Sec. 25. The circuit court clerk shall preserve the receptacle containing the envelope or bag in the clerk's office for the period required under IC 3-10-1-31.

Sec. 26. If the election is contested, the clerk shall preserve the receptacle containing the envelope or bag as long as the contest is undetermined. During that period, the clerk shall keep the receptacle securely locked, subject only to an order of the court trying a contest.

Sec. 27. When permitted under IC 3-10-1-31, the clerk and a

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1 county election board member of the opposite political party shall
 2 remove the envelope or bag from the receptacle and destroy the
 3 envelope or bag.

4 Sec. 28. A county election board may contract with a state
 5 educational institution (as defined in IC 20-12-0.5-1) to dispose of
 6 the ballots. The contract must provide that:

7 (1) the ballots will be used by the state educational institution
 8 to conduct election research; and

9 (2) the state educational institution may not receive any
 10 ballots under this section until the period for retention under
 11 IC 3-10-1-31 has expired.

12 Sec. 29. Immediately upon completion of the vote count, the
 13 counters shall make and sign a certificate for the news media
 14 showing the total number of provisional ballot votes received by
 15 each candidate and on each public question in the precinct.

16 Sec. 30. The absentee ballot counters shall deliver the certificate
 17 to the circuit court clerk as soon as the certificate is completed. The
 18 circuit court clerk shall deliver the certificate made for the news
 19 media to any person designated to receive the certificate by the
 20 editors of the newspapers published in the county or by the
 21 managers of the radio and television stations operating in the
 22 county immediately upon the completion of the certificate, but not
 23 before the closing of the polls.

24 Chapter 6. Additional Provisions Relating to Provisional Ballots

25 Sec. 1. (a) Provisional ballot counters shall conduct the activities
 26 conducted by precinct election officials under IC 3-12-4.

27 (b) The returns of provisional ballot counters shall be treated
 28 the same as the returns of a precinct election board under
 29 IC 3-12-4.

30 Sec. 2. A provisional ballot is considered to be cast in the
 31 precinct in which the voter who cast the ballot resides for the
 32 purpose of the following:

33 (1) IC 3-12-6.

34 (2) IC 3-12-11.

35 (3) IC 3-12-12.

36 SECTION 20. IC 3-12-3-11 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) The return
 38 printed by the automatic tabulating machines, along with the return of
 39 votes by absentee **and provisional** voters, constitutes the official return
 40 of each precinct. Upon completion of the count, the return is open to
 41 the public.

42 (b) This subsection applies if the votes have been cast on a ballot

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card voting system that is not designed to allow the counting and tabulation of votes by the precinct election board. The circuit court clerk shall, upon request, furnish to the media in the area the results of the tabulation.

(c) This subsection applies if the votes have been cast on a ballot card voting system that is designed to allow the counting and tabulation of votes by the precinct election board. Upon receiving the certificate for the media prepared under section 2(c) of this chapter, the circuit court clerk shall deliver the certificate to any person designated to receive the certificate by the editors of the newspapers published in the county or by the managers of the radio and television stations operating in the county.

SECTION 21. IC 3-14-2-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 27. A precinct election officer ~~who~~, at the close of the polls, ~~or~~ an absentee ballot counter acting under IC 3-11.5-5 or IC 3-11.5-6, **or a provisional ballot counter acting under IC 3-11.7-5** who knowingly:

(1) causes the vote to be incorrectly taken down for a candidate or public question; or

(2) makes a false statement, certificate, or return of any kind of that vote;

commits a Class D felony.

SECTION 22. IC 3-14-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. A member of a precinct election board, ~~or~~ an absentee ballot counter appointed under IC 3-11.5-4-22, **or a provisional ballot counter appointed under IC 3-11.7-3** who knowingly:

(1) opens or marks, by folding or otherwise, a ballot presented by a voter, except as provided by law; or

(2) tries to find out how the voter voted before the ballot is deposited in the ballot box or cast on a voting machine, ballot card voting system, or electronic voting system or counted by the absentee ballot counter;

commits a Class D felony.

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